STATE OF CALIFORNIA
CENTRAL COAST WATER BOARD
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Michael Thomas
Assistant Executive Officer
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Proposed Cease and Desist Orders Against Individual Properties in the Los Osos / Baywood Park Prohibition Zone – Presentation of Prosecution's Case

Dear Mr. Thomas:

On May 18, 2006, the Central Coast Regional Water Quality Control Board ("RWQCB") issued a request for written arguments regarding a number of procedural items stemming from the replacement of Lori Okun on the Prosecution Team in the above-referenced action. This letter represents my official comments on those matters.

It is my position that the RWQCB prosecution of the individual citizens in Los Osos and Baywood Park must be completely stopped and restarted from the very beginning. Ms. Okun was involved in the prosecutions from the start, and her influence in them is pervasive. From Ms. Okun's letter regarding her removal from the Prosecution Team, and from Stephen Onstot's comments at the April 28 hearing on the matter, I understand that the reason for Ms. Okun's removal is to remove the conflict of interest created by her both advising the RWQCB and prosecuting the individuals. Clearly, this conflict cannot be fully removed unless the prosecutions are cancelled and restarted from the very first steps.

Rather than address the five questions posed in the May 18 request separately, please allow me to simply continue in narrative fashion.

Restart the Prosecution from the Beginning. Ms. Okun's involvement and influence over the prosecution pervades the entire process to date. She presented a substantial portion of the Prosecution Team's argument, and she represented the Team in arguing legal points before the RWQCB. The only way to purge this influence is to start a completely new prosecution with completely new personnel involved.

Mr. Briggs Must be Removed from the Prosecution. In addition, the *Quintero* and *Morongo* cases cited by Mr. Onstot at the hearing and by Ms. Okun in her letter state that the purpose of removing legal counsel from a Prosecution Team stems from the fact that they regularly advise the board, and that the advisory role is completely incompatible with the prosecutorial role. Applying this rationale, senior staff (in this case, Roger Briggs) should also be removed from the Prosecution Team.

The Board Itself Must Step Aside. Ms. Okun has tainted the entire prosecution. Mr. Briggs has done so as well. Both should be removed from the Prosecution Team and the prosecution restarted from the very first steps. But this leads to another problem. The RWQCB has already heard the entire prosecutorial argument from the persons who have, according to *Quintero* and *Morongo* tainted the prosecution. And the RWQCB has made procedural rulings that shaped the scope of the case – and done so in reliance on what Ms. Okun and Mr. Briggs have advised or argued. It seems to me, therefore, that the entire Central Coast RWQCB should recuse itself from hearing this matter and should turn the matter over to one of the other Water Boards in the state. While this may seem to be a heavy burden, it is the only way in which due process may be upheld.

I do not think that I need to remind the board that government officers may face liability in their individual capacities for violations of civil rights under § 1983. Specifically, even in a quasi-judicial proceeding such as this one, the arbiters can be found liable for violations of civil rights where the proceeding lacked sufficient procedural safeguards to protect against violations. (See *Cleavinger v. Saxner* (1985) 474 U.S. 193).

Procedural Issues. Because the entire prosecution must start fresh from the beginning, be presented by a new Prosecution Team, and be heard by a different Water Board, the procedural issues raised by Questions One, Two, Three, and Four are moot. But presuming the RWQCB will not restart the prosecution and recuse itself, then my responses to those questions are as follows. The Prosecution Team's case, because it is thoroughly influenced by Ms. Okun, must be stricken completely from the record, and so must everything that followed it. Therefore, the entire hearing must begin again, with new presentations by the Prosecution and the Los Osos Community Services District, and a new opportunity for individuals to speak regarding procedural issues. And all parties should be allowed to supplement their cases with new materials – the decisions must be based on the best scientific evidence available.

Please mail copies of all briefs filed in response to the May 18 Request at the following address: P.O. Box 6608,Los Osos, CA 93412. I will timely submit my responses by July 21, 2006

Sincerely,

Laurie McCombs